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In The
Supreme Court of The United States

February, 1943, Term.

No. 792

MAX STEPHAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS,
SIXTH CIRCUIT, AND BRIEF IN SUPPORT
THEREOF.

NICHOLAS SALOWICH,
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Attorneys for Petitioner.



SUBJECT INDEX.

	Page
Petition for writ of certiorari	1-23
Brief for petitioner	25-98
Statement of facts	25-31
Summary of argument	32-36
Argument	37-98

I.

The overt acts alleged in the indictment do not set out a valid cause of action as none of the acts standing alone or tacked together constitute the crime of treason by adhering to, giving aid and comfort to an enemy country	37
--	----

II.

Petitioner avers that giving aid and comfort for the sole benefit of an individual, without the evil motive and intent to adhere to and give aid and comfort to the enemy country in furtherance of the hostile designs of the enemy, is not treason	42
--	----

III.

Krug, an officer in the German Luftwaffe, adhering to the Nazi philosophy, wholly devoid of moral principle, with such disregard of the obligation and sanctity of an oath or affirmation was to bar him from giving evidence in a capital case in a federal court of the United States	43
---	----

IV.

The presence of Krug as a witness, attired in the full uniform of an officer of the German Luftwaffe, was incurably prejudicial to the defendant; the admission of incompetent, irrelevant, immaterial and obscene testimony, part of which was stricken too late, violated the defendant's substantial rights and denied him a fair and impartial trial. 55

V.

The court should have compelled witness Krug to answer, or struck his entire testimony when Krug repeatedly refused to answer proper questions on cross-examination 64

VI.

Petitioner contends that the Government having failed to prove an overt act of treason and failed to produce two witnesses to any same overt act, constituting a fatal variance between the indictment and proof, the court erred in not directing a verdict for the defendant 71

VII.

The United States District Attorney, in his closing argument, resorted to intemperate, improper remarks, repeatedly referring to the fact that no witness had been called by the defense. The contention is that, by resorting to inference, implication and innuendo, inciting passion, the district attorney's remarks constituted palpably incurable error and a mistrial should have been declared.. 74

VIII.

Petitioner urges that harmful error occurred when the court, in its charge, failed to definitely, accurately and with certainty define an overt act of treason, and what constitutes, "adhering to, and giving aid and comfort," to an enemy country in the specific, comprehensive manner made mandatory by the gravity of the crime charged	83
---	----

IX.

The appellant contends that prejudicial error occurred when the phrase, "A secret agent for, spy for and secret representative of Germany in the furthering and carrying on of its war against the United States," was read from the indictment by the court in its charge, although the indictment had not previously been read to the jury on the trial, nor had any testimony been adduced to support that allegation in the indictment	88
--	----

X.

The jury not sequestered, but permitted to separate during the entire trial, were influenced to the detriment of the defendant. .	90
---	----

XI.

Petitioner avers the sentence is so severe and oppressive as to be wholly disproportionate to the offense and obviously so unreasonable that it violates the substantial rights of the defendant	94
Relief sought	98

Index Of Authorities Cited.

Adgins v. Ch. Hosp., 261 U. S. 525, 544.....	33, 34, 66
Aetna Ins. Company v. Kennedy, 301 U. S. 389, 81 L. Ed. 1177, 57 Sup. Ct. 809	45
Allen v. United States, 115 Fed. 3.....	79
Armour and Company v. Russell, 75 C. C. A. 416, 417, 144 Fed. 614, 615, 6 L. R. A. (N. S.) 662..	59
Berger v. United States, 295 U. S. 88, 89.....	35, 82
Berger Ward v. United States, 96 Fed. (2d) 189..	79
Boatright v. United States, 105 Fed. (2d) 737....	35, 87
Boston R. R. Company v. O'Reilly, 158 U. S. 334, 337, 15 Sup. Ct. 830, 39 L. Ed. 1006.....	60
Boyd v. United States, 142 U. S. 450, 12 Sup. Ct. 392	58
Burge v. United States, 26 App. 524	56
Cline v. United States, 20 Fed. (2d) 494.....	35, 87
Coale v. United States, 18 Fed. (2nd) 50.....	35
Cook v. United States, 18 Fed. (2d) 50.....	86, 87
DeJianne v. United States, 282 Fed. 739.....	46
Denning v. United States (C. C. A.), 247 Fed. 463	52
Derry v. Cray, 5 Wall. 795, 807, 18 L. Ed. 653....	59, 60
Dunn v. United States, 238 Fed. 508, 151 C. C. A. 444	46
Egan v. United States, 52 App. (D. C.) 384, 397, 287 Fed. 958, 971	80
Ex Parte Bollman, 8 U. S. 75	32, 41
Ex Parte Watkins, 7 Peters (U. S.) 568, 8 L. Ed. 786	36, 96
Funk v. United States, 290 U. S. 371, 378, 379, 54 Sup. Ct. 212, 214	45, 47, 48, 53
Gilmer v. Higley, 110 U. S. 47, 3 Sup. Ct. 471, 28 L. Ed. 62	60
Glasser v. United States, 86 L. Ed. 405 (412)....	33, 45

Green v. United States, 41 Sup. Ct. 449, 256 U. S. 689, 65 L. Ed. 1173	77
Griffin v. United States, 295 Fed. 439.....	36, 92
Harrison v. United States, 200 Fed. 669	36, 93
Hilliard v. United States, 121 Fed. (2d) 992.....	35
Hurwitz v. United States, 299 Fed. 449.....	35, 86, 87
In re Wilson, 114 U. S. 417	50
Justice Wilson's Charge to Grand Jury 1791, 3 Wilson's Works 380-381	50
Keliher v. United States, 193 Fed. 8, 114 C. C. A. 128	46
Kelly v. United States, 76 Fed. (2d) 847, 122 Fed. (2d) 461	46
Klose v. United States, 49 F. (2nd) 177	36
Logan v. United States, 144 U. S. 263, 309.....	33, 48, 97
Maryland Casualty v. Reid, 76 Fed. (2d) 30.....	79
Mattox v. United States, 146 U. S. 140, 150...33, 36, 57, 93	
Maxey v. United States, 207 Fed. (2d) 327.....	51
Mayer v. United States (C. C. A. Tenn. 1919), 259 Fed. 216	35, 77
McKibben v. Phila. and Reading Railway Company, 251 Fed. 577	33, 57, 93
McKnight v. United States, 115 Fed. 972, 982, 54 C. C. A. 358	77
McKurglet v. United States, 115 Fed. 982.....	35
Meriher v. United States, 85 Fed. (2nd) 425.....	35
Meyer v. Cadawalader, 49 Fed. 32	36, 92
Miller v. United States, 38 App. (D. C.) 361.....	46
Miller v. United States, 120 Fed. (2d) 972, 973.... 35, 85, 86, 88	
Milton v. United States, 110 Fed. (2d) 556, 558....	35, 81
Minker v. United States, 85 Fed. (2d) 425.....	75
Mutual Reserve Life Ins. Company v. Heidel, 161 Fed. 535, 539, 88 C. C. A. 447, 481.....	59
Nonfield v. United States, 118 Fed. (2d) 393.....	80

Ogden v. United States, 112 Fed. 523.....	90
Ohio Bell Tel. Company v. Public Ut. Comm., 301 U. S. 292, 57 Sup. Ct. 724	45
Oppenheim v. United States, 241 Fed. 625, 154 C. C. A. 283	46
Parker v. United States, 3 Fed. (2d) 903.....	52
Peck v. Heurich, 167 U. S. 624, 629, 17 Sup. Ct. 927, 42 L. Ed. 302	59
People v. Wessel, 256 Mich. 72	78
Pettine v. New Mexico, 201 Fed. 489, 119 C. C. A. 581	46
Pierce v. United States, 86 Fed. (2d) 949.....	35, 80
Railroad Company v. Holloway, 52 C. C. A. 260, 114 Fed. 458	59
Reagan v. United States, 15 Sup. Ct. 610, 157 U. S. 301, 39 L. Ed. 709	77
Resurrection Gold Mining Company v. Fortune Gold Mining Company, 64 C. C. A. 180, 189, 129 Fed. 668	60
Savage v. United States, 213 Fed. 31, 130 C. C. A. 1	46
Scaffidi v. United States, 37 Fed. (2d) 203, 207, 208	51
Simmons v. United States, 142 U. S. 148	36
Simon v. United States, 123 Fed. (2d) 80.....	86
Sprinkle v. United States, 150 U. S. 56, 59, 63.... 34, 35, 60, 73, 97	
State v. Chandler, 10 N. C. 393-397.....	53
State v. Goodson, 107 N. C. 798, 12 S. E. 329.....	61
State v. Jones, 93 N. C. 611.....	61
State v. Massey, 86 N. C. 658, 41 Am. Rep. 478....	60
State v. Mickle, 81 N. C. 552	60
Stokes v. United States, 264 Fed. 18	35, 86, 87
Stone v. United States, 113 F. (2nd) 70.....	36, 91
Sunderland v. United States, 99 Fed. (2d) 202....	75
Taliaferro v. United States, 47 Fed. (2d) 699....	75

Todd v. United States, 221 Fed. 209, 210.....	34, 59
Tootham v. United States, 203 Fed. 220.....	58
Towbin v. United States, 93 Fed. (2d) 861.....	35
Turk v. United States, 20 Fed. (2d) 129.....	75
United States v. Block, 24 Fed. Cas. No. 14,609....	33, 49
United States v. Bollman, 8 U. S. 75....	33, 34, 35, 56, 97
United States v. Burr:	
25 Fed. Cas. No. 14,692.....	41, 84, 96
25 Fed. Cas. No. 14,692-h, pp. 52, 54.....	39
25 Fed. Cas. No. 14,693, p. 55.....	39
25 Fed. Cas. No. 14,693.....	35, 39, 40, 73, 84, 96
United States v. Daubner (D. C.), 17 Fed. 793.....	60
United States v. Fricke, 259 Fed. 673, 676, 677....	
	32, 34, 40, 42, 84, 97
United States v. Fries, 9 Fed. Cas. No. 5126, p. 914	63, 96
United States v. Goelde and Company, 40 Fed.	
Supp. 523	86, 90
United States v. Greiner, 26 Fed. Cas. No. 15,262	34, 84
United States v. Hall, 53 Fed. 352, 372.....	52
United States v. Hughes, 175 Fed. 238.....	52
United States v. Herberger, 272 Fed. 290.....	32, 39
United States v. Marrin, 159 Fed. 767.....	36
United States v. Nettle, 121 Fed. (2d) 927.....	35, 76
United States v. Ogden, 105 Fed. 371.....	33, 57, 93
United States v. Reid, 12 How. 361, 363, 364, 366,	
13 L. Ed. 1023	33, 48
United States v. Robinson, 259 Fed. 685, 690, 691,	
694	32, 33, 34, 35, 37, 47, 71, 72, 84, 97
United States v. Schaefer, 251 U. S. 482	32, 41, 97
United States v. Seymour, 50 Fed. (2d) 930.....	34
United States v. Werner, 247 Fed. 708, 709, 711....	
	32, 34, 39, 43, 72
Weare v. United States, 1 Fed. (2d) 617.....	35, 86, 87

Weathers v. United States, 117 Fed. (2d) 585....	35, 79
Weems v. United States, 217 U. S. 349, 30 Sup. Ct. 544	46
West v. Louisiana, 194 U. S. 258, 48 L. Ed. 965....	33, 34
Williams v. United States, 13 Sup. Ct. 765, 149 U. S. 60, 37 L. Ed. 650	77
Wilson v. United States, 149 U. S. 60.....	35, 78, 81
Wimmer v. United States, 264 Fed. 11 (C. C. A. 6)	39
Young v. United States, 97 U. S. 62.....	32, 39

Constitution Of the United States.

Art. 3, Sec. 3, Cl. 1.....	34, 83
----------------------------	--------

Statutes.

Act Sept. 24, 1789, Ch. 21, Stat. 73.....	51
Act April 30, 1790, Ch. 9 (1 St. 112-117)	50
Act March 16, 1878, 20 Stat. 30, 28 U. S. C. A., Sec. 362	80
R. S. 5331, March 4, 1909, Ch. C 321, Sec. 1, 35 Sta. 1088	34, 84

United States Code.

U. S. C., Title 18, C. 1, Sec. 1.....	34
U. S. C., Title 28, Ch. 17, Sec. 632.....	35, 77

Law Volumes.

30 Fed. Nos. 18,271, 18,272	32, 34, 37, 84
30 Fed. No. 18,270.....	40, 64
16 C. J., page 81, Par. 12 F. N. 9.....	33
2 Wigmore on Evidence, Par. 1367, 1390-1391 ...	33, 34
5 Jones Commentaries on Evidence (1st Ed.) 842..	33, 34, 70
Wharton's Crim. Law, 11 Ed., Vol. 3, Sec. 2153, p. 2310	39
Wharton's Crim. Law, 10 Ed., Vol. 1, Sec. 358, p. 721	46
Mich. Stat. Ann., Vol. 1, p. 115	52
1 Terr. Laws 900	52
70 C. J. 107, fn. 23	53
Bishop New Cr. Proc., Vol. 1, pages 89, 92, 93; also 1273, 1274, 1275 and 1276 and cases cited.....	61
2 Wall. Jr. 138	64
Wigmore on Evidence (3rd Ed.), Par. 1390, 1391..	67
American Journal of International Law, Vol. 13, page 98, citing agreement between United States and Germany concerning prisoners of war	78
1 Burr. Tr. 196	64, 96
84 A. L. R. 784 (cases cited)	81
Ann. Cases 1914A 1248	97
42 L. R. A., N. S., 978	97
16 C. J. 1351 fn. 46	98

English Cases.

(Eng.) Bushel v. Barrett, R. & N. 438	33, 49, 50
Eden Prins. P. L. C. 7, Sec. 5.....	33, 50
Gilb. Ev. 143	33, 50

In re Ville de Varsovie, 2 Dods 174.....	33, 50
Pendock v. Mackinder, Willes 665	33, 50
Reg. v. Webb, 11 Cox C. C. 133	33, 50
Rex v. Priddle, 2 Leach C. C. 496	33, 50
The King v. Priddle, 1 Leach (4th Ed.) 442.....	33, 50
Webb v. State, 29 Oh. St. 351	33, 50
2 Hawk C. 46, Sec. 102.....	33, 50
7 Comyns Dig., page 447	33
21 E. C. L. 790	33

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No.



MAX STEPHAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS, SIXTH CIRCUIT.



TO THE SUPREME COURT OF THE UNITED
STATES OF AMERICA:

Petitioner herein, Max Stephan, by Nicholas Salowich
and James E. McCabe, his attorneys, respectfully repre-
sents to this Honorable Court:

I.

That for a summary and short statement of the matter involved, he says:

1. That June 17, 1942, petitioner was indicted for the crime of treason in the District Court of the United States for the Eastern District of Michigan, Southern Division, in one count, charging thirteen overt acts (R. 1-6) under R. S. 5331; March 4, 1909, C. 321, Sec. 1, 35 Sta. 1088; U. S. C. Title 18, C. 1, Sec. 1. He was arraigned on this indictment June 20, 1942, and stood mute (R. 8); trial was begun June 29, 1942, before Hon. Arthur J. Tuttle, one of the judges of said Court, and a jury; on July 1, 1942, the jury returned a verdict of guilty as charged (R. 342); on September 5, 1942, the court imposed a sentence that he be "hanged by the neck until he, * * * is dead" (R. 362).

2. Thereafter, to-wit, July 3, 1942, a motion for a new trial (R. 21) was filed, and the same was denied July 13, 1942 (R. 23).

3. Thereafter, to-wit, July 18, 1942, a notice of appeal to The United States Circuit Court of Appeals, Sixth Circuit, was filed. On September 9, 1942, the record on appeal was certified (R. 365) and briefs were filed in the said Circuit Court of Appeals, and an argument by counsel had, and on February 6, 1943, that Court affirmed the sentence imposed below (p. 37 of opinion).

4. Petitioner herein seeks a Writ of Certiorari to issue from this Court to the United States Circuit Court of Appeals, Sixth Circuit, to review its affirmance on February 6, 1943, of the sentence entered in the District

Court of the United States for the Eastern District of Michigan, Southern Division, imposed September 5, 1942.

II.

The basis on which it is contended that this Court has jurisdiction to review the determination of the United States Circuit Court of Appeals, Sixth Circuit, of February 6, 1943, is as follows:

1. Sec. 240 (a) of The Act of Congress of February 13, 1925, Chapter 229, 43 Sta. 936, as amended, provides that, "In any case, civil or criminal, in any circuit court of appeals * * * it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, * * * to require by Certiorari, either before or after judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

2. It is claimed by petitioner that on the facts stated in division I above of this petition, this case falls within the said Act of Congress of February 13, 1925, Chapter 229, 43 Sta. 936, and that, therefore, this Court has jurisdiction as to subject matter to issue the writ prayed.

3. The determination of The United States Circuit Court of Appeals, Sixth Circuit, which is here sought to be reviewed was made February 6, A. D. 1943; the record in the office of the Clerk of this Court will show that this petition was filed within thirty days thereof and therefore within the time prescribed by Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934, pursuant to The Act of Congress of March 8, 1934.

4. Wherefore petitioner claims this Court has jurisdiction to issue the writ prayed; a separate statement as to jurisdiction is filed herewith, in typewriting, as required by Rule 12, as amended by order of this Court dated April 6, 1942.

III.

The questions to be presented in the review sought are as follows:

1. In the aforesaid appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division, to the United States Circuit Court of Appeals, Sixth Circuit, twenty-five errors were assigned in as many separate assignments of error, each being directed to a separate error in the proceedings in the trial court; some of these assignments of error were grouped together for argument, being thus more conveniently discussed as matters of law, giving rise to eighteen questions of law, all of which were decided adversely to petitioner by the said United States Circuit Court of Appeals, Sixth Circuit, in its determination of February 6, 1943, review of which is herein sought, said questions being as follows:

A. (a):

“Question 1. Do the overt acts in the indictment support the charge of treason, and does the indictment with particularity and certainty charge the crime of treason?”

(b) The overt acts charged in said indictment were as follows:

“1. Said Max Stephan, on April 18, 1942, did travel by automobile from his own home at 7209

East Jefferson Avenue, Detroit, Michigan, to the home of Mrs. Margaretta Johanna Bertelmann, at 259 Philip Avenue, Detroit, Michigan, for the purpose of taking, and with intent to take, said enemy, Peter Krug, under and within his protective care and for the purpose of giving, and with intent to give said enemy, Peter Krug, aid and comfort; and

2. Said Max Stephan, on April 18, 1942, did solicit and obtain from Margaretta Johanna Bertelmann money and currency of the United States of America for the use and benefit of, and for the purpose of giving and with intent to give said enemy, Peter Krug, aid and comfort; and

3. Said Max Stephan, on April 18, 1942, did escort said Peter Krug from the home of Margaretta Johanna Bertelmann and to the automobile then being used by said Max Stephan, for the purpose of giving and with intent to give aid and comfort to said enemy, Peter Krug; and

4. Said Max Stephan, on April 18, 1942, did transport said enemy, Peter Krug, from the home of Margaretta Johanna Bertelmann to the place of business of said Max Stephan for the purpose of giving and with intent to give aid and comfort to said enemy, Peter Krug; and

5. Said Max Stephan, on April 18, 1942, about eleven o'clock in the forenoon thereof, at his place of business, 7209 Jefferson Avenue, Detroit, Michigan, furnished, supplied and gave to said enemy, Peter Krug, food, drink and personal effects and clothing for the purpose of giving and with intent to give aid and comfort to said enemy, Peter Krug, and

7. Said Max Stephan, on April 18, 1942, escorted said enemy, Peter Krug, to Haller's Cafe, 1407 Randolph Street, Detroit, Michigan, and bought something to drink for himself and said enemy, Peter Krug, and then and there did conceal and cover up the true identity of said enemy, Peter Krug, by introducing him as 'one of the Meyers boys' for the purpose of and with intent to conceal the identity of the said enemy, Peter Krug, and to

give aid and comfort to said enemy, Peter Krug; and

8. Said Max Stephan, on April 18, 1942, escorted said enemy, Peter Krug, to the Progressive Club, 3003 Elmwood Avenue, Detroit, Michigan, and bought something to drink for himself and said enemy, Peter Krug, and then and there did conceal and cover up the true identity of said enemy, Peter Krug, as a friend of his from Milwaukee for the purpose of concealing and with intent to conceal the identity of the said enemy, Peter Krug, and for the purpose of giving and with the intent to give aid and comfort to said enemy, Peter Krug; and

9. Said Max Stephan, on April 18, 1942, escorted and transported said enemy, Peter Krug, to the place of business of Theodore Donay, 3152 Gratiot Avenue, Detroit, Michigan, and introduced said Theodore Donay to said enemy, Peter Krug, and at which place said enemy, Peter Krug, related to said Theodore Donay the incidents in the escape of said Peter Krug from a Canadian military prisoner's camp in Ontario, Canada, and of his travel thence to Detroit, related his version of the conditions in and about said prisoner's camp in Ontario, and of the intended future travel of said enemy, Peter Krug, and at which place the said Max Stephan purchased some candy and gave the same to said enemy, Peter Krug, and at which place said Max Stephan solicited and obtained from said Theodore Donay money and currency of the United States which was given to said enemy, Peter Krug, for his use and benefit for the purpose of giving, and with intent to give aid and comfort to said enemy, Peter Krug; and

10. Said Max Stephan, on April 18, 1942, escorted and transported said enemy, Peter Krug, to a residence building at 54 Duffield Street, Detroit, Michigan, and arranged for the entertainment and accommodation of said enemy, Peter Krug, for the purpose of giving, and with intent to give aid and comfort to said enemy, Peter Krug; and

11. Said Max Stephan, on April 18, 1942, in the evening hours thereof, transported and escorted said enemy, Peter Krug, to the place of business of said Max Stephan and then and there entertained said enemy, Peter Krug, at dinner and gave him food and drink, and concealed the identity of said enemy, Peter Krug, by introducing him as a man from Milwaukee, for the purpose of concealing and with intent to conceal the true identity of said enemy, Peter Krug, and for the purpose of giving and with intent to give aid and comfort to said enemy, Peter Krug; and

12. Said Max Stephan, on April 18, 1942, directed and gave orders to others in arranging that said enemy, Peter Krug, should register as a guest at the Field Hotel, Field Avenue, Detroit, Michigan, and spend the night of April 18, 1942, as such guest of such hotel, for the purpose of giving and with the intent to give aid and comfort to said enemy, Peter Krug; and

13. Said Max Stephan, on April 19, 1942, escorted and transported said enemy, Peter Krug, from 7209 Jefferson Avenue, Detroit, Michigan, to Washington Boulevard and Grand River Avenue in the same city, entertained said enemy, Peter Krug, at breakfast, supplied him with food and drink, and arranged, purchased and paid for transportation by Greyhound Bus from Detroit, Michigan, to Chicago, Illinois, to assist said enemy, Peter Krug, on a journey through the United States, the object of which journey was to have said Peter Krug pass through Mexico, through the United States, into South America and thence back to Germany to resume active status as a member of the military forces of the government of Germany in the prosecution of the war against the United States, for the purpose of giving and with intent to give aid and comfort to said enemy, Peter Krug;"

(c) It was claimed in the United States Circuit Court of Appeals, Sixth Circuit, that their charges (1) were

ambiguous, uncertain and general, and (2) that they made out no cause of action—did not individually or all together constitute the crime of treason. The court discussed this question in its opinion and decided adversely to petitioner.

(d) This question was raised by assignments of error 1 and 3, which were as follows:

“1. That the indictment does not allege the crime of treason.

“3. That the overt acts alleged in the indictment do not support the charge of treason.”

B. (a):

“Question 2. Does aid and comfort to an individual for his sole benefit constitute aid and comfort to the enemy country?”

(b) After describing one Peter Krug as “a subject of the government of Germany and a member of the armed military forces of the government of Germany (with which the United States, at all times since December 11, 1941, have been at war) and a secret agent for, spy for, and secret representative of said government of Germany in the furthering and carrying on of its war against the United States, and an officer in the army of the government of Germany who had escaped from a military war prisoner’s camp in Ontario, Canada, the said Max Stephan giving to said enemy, Peter Krug, aid and comfort,” the indictment charged that petitioner did “unlawfully, feloniously, wilfully, traitorously, treasonably, knowingly and with intent to adhere to and to give aid and comfort to the said Peter Krug, an enemy, did do, perform and commit” the overt acts above set forth.

(c) It was claimed by petitioner in the United States Circuit Court of Appeals, Sixth Circuit, that these allegations (1) charged only acts of kindness to an individual, and not acts of adherence to an enemy, (2) that it charged no act of hostility, (3) that it charged no treason or act of treason. This was discussed and ruled adversely to petitioner by the United States Circuit Court of Appeals, Sixth Circuit.

(d) This matter was raised by assignment of error number 2, which is as follows:

“2. That the indictment does not directly, and with particularity and certainty, charge Max Stephan with the crime of treason.”

C. (a):

“Question 3. Did the Court err in permitting witness Krug, a Nazi Luftwaffe Officer, to testify as a competent witness in a capital case in a Federal Court?”

(b) The witness, Peter Krug, was a prisoner of war of the Dominion of Canada (R. 37-38, 52-116), brought to Detroit to testify in the custody of Canadian military officers. He described himself as an Oberleutenant of the German Luftwaffe. He said, “I can’t swear under foreign law, because I am a military man,” and was permitted to affirm (R. 51-52). It was beyond the power of the court to punish him for contempt or any other misdoing (R. 83). He had been shot down over England August 28, 1940, and captured (R. 37-38). He had had no communication with Germany since his capture (R. 111). He appeared in court in full regalia as a German officer and gave the Nazi salute (R. 305).

Petitioner claims that the Nazi philosophy or ideology is infamous, that it is a part of that ideology that its adherents will lie, perjure themselves, or commit other crimes, with total abandon to gain their ends, that this is so fully recognized that our country was moved to engage in a great war to rid the world of it, that therefore Peter Krug, a confessed and patent adherent to that ideology, who would not swear, and who was beyond the power of the court to punish, did not have the requisites of a competent witness.

(c) This question was raised by assignment of error number 5, which is as follows:

"5. That the Court erred in permitting an admitted and sworn enemy of the United States to testify as a competent witness."

D. (a):

"Question 4. Did the Court err in permitting witness Krug to testify after giving the Nazi salute, and while attired in the full uniform of an officer of the German Army to the incurable prejudice of the substantial rights of the defendant?"

(b) The facts which form the basis of this contention are discussed in C (b) above.

(c) This question was raised by assignment of error number 6, which is as follows:

"6. That the Court erred in permitting the witness Krug to testify while dressed in the full uniform of an officer of the German Luftwaffe to the prejudice of the defendant."

E. (a):

“Question 5. Did the Court err in failing to compel witness Krug to answer proper questions on cross-examination?”

(b) The witness Krug was the most important witness of the prosecution. He refused to answer questions admittedly relevant and competent after the prosecution had had the benefit of full direct examination, saying, “It is a military secret” (R. 81). He refused to answer many questions that were the gist of proper cross-examination (R. 84, 87, 97, 114). We contend that his entire testimony should have been stricken and cannot form the basis for a conviction.

(c) This question is raised by assignments of error numbers 7, 8, 9 and 10, which are as follows:

“7. That the Court erred in not compelling witness Krug to answer proper questions on cross-examination.

“8. That the Court erred in not striking, on its own motion, the entire testimony of witness Krug after Krug refused to testify further on the grounds that he had been misinformed, misled and tricked into believing that he was helping to correct a wrong that he had himself committed.

“9. That the Court erred in not striking witness Krug’s entire testimony, when Krug refused to testify further thereby depriving and precluding defendant from further cross-examination.

“10. That the Court erred in not striking testimony of witness Krug immediately after Krug, in open court, had confessed guilt of forgery and theft.”

F. (a):

“Question 6. Did the Court err in admitting incompetent, irrelevant, immaterial and obscene testimony which incurably prejudiced the substantial rights of the defendant?”

(b) (1) In the matter alluded to as the Von Werra matter the District Attorney was permitted by the Court over objection of counsel to elicit from the witness Krug testimony regarding a conversation he had had in a restaurant while he was in Detroit with a person named Donay, who was unidentified, about the German Consul furnishing \$50,000.00 bail for Von Werra in an unidentified case. The witness knew Von Werra and stated he was a German flyer like himself. Krug knew nothing about the Von Werra matter except what he had read in the newspapers. The District Attorney, however, in a leading question stated that he had succeeded in getting back to Germany and had been killed in action (R. 70-74).

(2) The testimony of Alvina Ludlow (R. 185-190) and Ethel Merrifield (R. 190-193) was introduced over objection to show that Krug while in Detroit had experienced a wish for “a woman” and had been taken to a place and there had immoral relations with the witness Merrifield. This was gone into in detail. It was permitted to stand in the record until the next day when it was stricken in a manner resulting in impressing it more firmly in the minds of the jury (R. 261-263) and in the charge the Court again called it to the minds of the jury (R. 338).

(3) From the testimony of the witnesses Parker (R. 201-216, 233-235) and Gasteiger (R. 198-201) it was shown that Krug had been apprehended in San Antonio, Texas, May 31, 1942, six weeks after he had been in Detroit.

Over objection these witnesses were permitted to testify as to his statements at that time, and articles he had in his possession at that time were admitted into evidence—officers epaulets, a map showing Krug's bus route marked in pencil, a card with some writing on it and a revolver and ammunition he had secured in San Antonio. The statements were later stricken, without curative instruction, but the exhibits allowed to remain (R. 366).

(4) The witness Bugas (R. 217-232) was permitted to identify a typewritten statement said to be signed by defendant, called a "confession" (R. 222-226). It is claimed to be neither a statement against interest nor a "confession," but a recital of innocent doings, and did not comply with the law as to admissibility of a confession in a treason case.

(c) These errors were grouped under assignments of error numbers 11 and 21, which are as follows:

"11. That even though stricken, the incompetent, irrelevant and obscene testimony relative to entertainment by immoral women, alleged in overt act ten, was prejudicial error."

"21. That the Court erred in not instructing the jury that the written statement made and signed by the defendant after arrest was not a confession."

G. (a):

"Question 7. Did the Court err in admitting incompetent and irrelevant testimony relative to acts and declarations of Krug elsewhere and subsequent to the overt acts charged in the indictment?"

(b) The facts that form the basis of this question are related in F (b) (2) above.

(c) These errors were pointed out in assignment of error number 11, which is as follows:

"11. That even though stricken, the incompetent, irrelevant and obscene testimony relative to entertainment by immoral women, alleged in overt act ten, was prejudicial error."

H. (a):

"Did the Court err in admitting the incompetent and irrelevant exhibits, i. e., epaulets, a Greyhound Bus Company map, a revolver and cartridges, Government's Exhibits 4, 9, 12 and 13, respectively, all of which were prejudicial to the defendant's substantial rights?"

(b) The facts that form the basis of this question are related in F (b) (3) above.

(c) This error is pointed out in assignment of error number 11, which is as follows:

"11. That even though stricken, the incompetent, irrelevant and obscene testimony relative to entertainment by immoral women, alleged in overt act ten, was prejudicial error."

I. (a):

"Question 9. Did the Court err in failing to direct a verdict for the defendant upon conclusion of the testimony, because there was fatal variance between the indictment and the proof?"

(b) At the close of the Government's case a motion for a directed verdict was made on the following grounds (R. 236):

"First, there has been insufficient proof of the criminal and evil intent on the part of the respondent."

ent to warrant the submission of this case to the jury.

"Second, there has been insufficient proof, total lack of proof that the respondent, Max Stephan, is a citizen of the United States.

"Third, that the great weight of the evidence is against a sufficiency of proof of the guilt of the defendant that warrants the Court in directing a verdict of not guilty."

This motion was denied (R. 239).

(c) This question is raised by assignments of error numbers 13 and 14, which are as follows:

"13. That the testimony failed to prove an overt act constituting the crime of treason.

"14. That no two witnesses testified to the same overt act."

J. (a):

"Question 10. Did the Court err in failing to direct a verdict for the defendant upon conclusion of the testimony because of the insufficiency of the evidence, and was the verdict of the jury a miscarriage of justice?"

(b) The facts in which this error appear is shown in I (b) above.

(c) This question is raised by assignment of error number 15, which is as follows:

"15. That the Court erred in denying motion for a directed verdict at the conclusion of testimony."

K. (a):

"Question 11. Should the Court have declared a mistrial during the closing argument when the United States District Attorney made repeated reference to the defendant's failure to produce witnesses and made the direct statement that the defendant had not taken the stand?"

(b) In his closing argument the District Attorney said, "This is Max's statement as introduced here. And to that Max made no comment" (R. 311). He also said, "Krug's statement stands on the record in this case, ladies and gentlemen of the jury, absolutely uncontradicted" (R. 305). A very similar statement was repeated several times (R. 305). The District Attorney also said, "I hold no brief for him (Krug) as he stepped into this court room and gave a Nazi salute" (R. 305).

(c) This matter is raised in assignment of error number 16, which is as follows:

"16. That the Court erred in permitting the United States Attorney, in his closing argument, to repeatedly make derogatory remarks tending to inflame the jury to the prejudice of the defendant's rights."

L. (a):

"Question 12. Did the intemperate, improper, and inflammatory remarks, inciting passion, in the closing arguments of the United States District Attorney prejudice the defendant's substantial rights?"

(b) In his argument the District Attorney alluded to defendant, this petitioner, as "poor Max Stephan, * * * dumb Max Stephan * * * generous-hearted, good-hearted Max * * *" (R. 306). He intimated that this

was the kind of a case "where the death penalty would be absolutely unfair" (R. 303). He repeated the words "black-hearted traitor" (R. 306-307). He repeated five times, "No, Max Stephan, you won't get away with it" (R. 269).

(c) These errors are pointed out in assignment of error number 16, which is as follows:

"16. That the Court erred in permitting the United States Attorney, in his closing argument, to repeatedly make derogatory remarks tending to inflame the jury to the prejudice of the defendant's rights."

M. (a):

"Question 13. Did the charge of the Court clearly define the crime of treason?"

(b) Nowhere in its charge did the Court with any degree of clarity define the crime of treason, nor state or define its elements with any degree of clarity (R. 318-342).

(c) This matter is raised by assignment of error number 17, which is as follows:

"17. That the charge of the Court did not clearly and with certainty define the crime of treason."

N. (a):

"Question 14. Did the charge of the Court fully, clearly and with particularity define an overt act constituting the crime of treason?"

(b) Nowhere in the charge (R. 318-342) did the Court define or with any clarity explain "overt act" as that term is used in the crime of treason.

(c) This error is pointed out in assignment of error number 18, which is as follows:

“18. That the Court erred in not instructing the jury definitely and with certainty what constitutes an overt act.”

O. (a):

“Question 15. Did the charge of the Court fully, clearly and with particularity instruct the jury as to what constitutes ‘adhering to the enemy, giving them aid and comfort?’ ”

(b) Nowhere in its charge (R. 318-342) did the Court define or with any clarity explain the phrase or phrases “adhering to the enemy, giving them aid and comfort.”

(c) This error is pointed out in assignment of error number 20, which is as follows:

“20. That the Court erred in not fully instructing the jury as to what constitutes giving aid and comfort to an enemy country.”

P. (a):

“Question 16. Did the words and phrase which alleged Krug to be, ‘a secret agent for,’ a ‘spy for,’ and ‘secret representative of said Government of Germany in the furthering and carrying on of its war against the United States,’ incurably prejudice the defendant’s substantial rights when the words and phrase were read, for the first time in the trial, by the Court in its charge to the jury; since the only testimony introduced was in direct refutation of those allegations?”

(b) For the first and only time in the trial the phrases of the indictment, “a spy for” and “a secret repre-

sentative of the said Government of Germany * * *” as applied to Krug, was used by the Court in its charge (R. 328). There was no proof in the record of these words, for Krug was admittedly a flyer in the air wing of the German Army, captured by the British, interned in Canada, escaped to the United States, recaptured and redelivered to Canada, and brought here by Canadian officials to testify, and not in communication with any of his superiors from the date of his capture nearly two years before, with no training or instruction as to being a spy or secret agent.

(c) This question was raised by assignment of error number 22, which is as follows:

“22. That the use of the words, ‘spy,’ ‘secret agent,’ and ‘secret representative of the German government,’ in the indictment, read, for the first time during the trial, in the charge of the Court, said words being wholly unsupported by any evidence, was prejudicial error.”

Q. (a):

“Question 17. Did the Court err in permitting the jury during the trial to separate each noon, and go home each night, relying solely on their discretion to protect them from unlawful exposure and the undue outside influences of personal contact, public sentiment, newspapers and radio?”

(b) The record does not indicate any effort on the part of the trial court to keep the jury from outside influences, not even the usual cautionary instruction. In fact, they were left to go their own way at each recess, with newspapers, radio and common talk being full of the case.

(c) This question is raised by assignment of error number 24, which is as follows:

“24. That the Court erred in exposing the jury to undue outside influences and public sentiment by not placing the jury in custody during the trial.”

R. (a):

“Question 18. Did the evidence support and warrant the cruel and unusual punishment of hanging by the neck until dead?”

(b) The sentence was death by hanging (R. 25-26). It is contended that this sentence is grossly and shockingly disproportionate to any misdoing on the part of defendant and this petitioner.

(c) This point is raised by assignment of error No. 25, which is as follows:

“25. That the evidence does not support and warrant the cruel and unjust sentence.”

IV.

We submit the following as the reasons why this Court should grant the writ prayed for.

1. This Court has never, so far as has been ascertained, reviewed a treason case. This is the first treason case during the life of this Court wherein a defendant has been convicted by a jury on a treason charge. We are now in a state of war, and it is altogether likely that other treason cases will reach the courts shortly. The rulings of this Court on the questions presented by this record—many fundamental to treason—will be invaluable

as a guide in future cases, and will settle many questions now in doubt.

2. Many terms such as "overt act," "aid and comfort to the enemy," the word "treason" itself, and "adhering to the enemy," as set out in the Constitution and the Acts of Congress have never been defined or construed by this court. They are all fundamental to the crime of treason.

3. The issue as to whether a traitor shall escape just punishment or whether one charged with the crime of treason shall suffer the extreme penalty without a fair trial, thus striking a heavy blow at those fundamental rights which we are at the moment engaged in a life and death struggle to preserve, is of immediate and vital importance.

4. The dire penalty imminent to petitioner should arrest the attention of this court, commanding its full review to determine the justice thereof.

5. A direct appeal to this court from the trial court would have been a matter of right under The Act of Congress of February 6, 1889, C. 113, Sec. 6, 25 Sta. 656, U. S. C. Title 18, Sec. 681. When the appeal is expeditiously taken and fundamental questions raised, the policy of the law, as expressed in that Act of Congress, should be observed in the instant case.

6. Discussion and decision by this Court of the questions presented by this appeal will be of great service to the profession and to the people.

WHEREFORE, petitioner prays that this Court issue its writ of certiorari to the United States Circuit Court of Appeals, Sixth Circuit, to review its affirmance of Febru-

ary 6, A. D. 1943, of the conviction and sentence of petitioner, Max Stephan, in the District Court of the United States for the Eastern District of Michigan, Southern Division.

NICHOLAS SALOWICH,
JAMES E. McCABE,
Petitioners.

NICHOLAS SALOWICH,
JAMES E. McCABE,
Attorneys for Petitioner.

State of Michigan,
County of Wayne—ss.

On this 27th day of February, A. D. 1943, before me, a Notary Public, in and for said County and State, personally appeared Nicholas Salowich and James E. McCabe, to me personally known, who being by me duly sworn, did depose and say that they have read the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Michigan by them subscribed in behalf of petitioner; that they know the contents thereof and that the same is true of their own knowledge, except as to those matters therein stated to be upon information and belief and as to those matters they believe them to be true, and that they are duly authorized to sign such petition.

Marcella Wagner,
Notary Public,
Wayne County, Michigan.

My commission expires June 11, 1945.